

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHU ANZAI,

Defendant.

Case No. 5:25-CR-00002-CDB

ORDER DIRECTING COUNSEL FOR
DEFENDANT TO REMIT \$350.00 TO THE
CLERK OF THE COURT TO REMIBURSE
THE COST OF INTERPRETER SERVICES

(Docs. 13, 14)

10-Day Deadline

Relevant Background

On March 15, 2025, Defendant Shu Anzai was cited on Edwards Air Force Base for violation of 18 U.S.C. § 1382, which prohibits any person from “go[ing] upon any military[] ... installation[] for any purpose prohibited by law or lawful regulation.” (Doc. 1). Defendant first appeared before the Court, through retained counsel (Mr. John Underwood) on June 3, 2025, and was advised of his rights, the pending charge, and the maximum penalty upon conviction (*i.e.*, six months imprisonment, a \$5,000 fine, and a \$10 mandatory special assessment). (Doc. 3). Because the Court had been informed prior to the initial appearance that Defendant required the services of a Japanese interpreter, a court-certified linguist fluent in the Japanese language also appeared and assisted Defendant. At the conclusion of the initial appearance, Defendant was ordered to appear for status conference on August 5, 2025. *Id.*

1 The following day (June 4, 2025), counsel for Defendant filed a waiver of Defendant's
 2 appearance pursuant to Rule 43, Federal Rules of Criminal Procedure, and proposed order thereon.
 3 (Doc. 6). On June 5, 2025, the Court granted Defendant's waiver of appearance and excused him
 4 from appearing at all future proceedings with certain identified exceptions, including "until
 5 ordered to appear." (Doc. 7).

6 On June 27, 2025, the government filed a superseding information charging Defendant
 7 with violation of 18 U.S.C. § 795, which prohibits any person from taking a photograph of a "vital
 8 military installation." (Doc. 9). Because an arraignment on superseding charges ordinarily
 9 warrants an in-person appearance and because the superseded charge against Defendant is a Class
 10 A misdemeanor implicating higher maximum penalties than those for which he was advised on
 11 the original charge, on July 9, 2025 (the "July 9 order"), the Court directed Defendant to appear at
 12 the August 5 status conference in-person. (Doc. 11). In its order, the Court expressly
 13 acknowledged that "[t]he Court's prior grant of Defendant's request for waiver of appearance
 14 pursuant to Fed. R. Crim. P. 43 [citation omitted] shall not excuse Defendant from appearing in-
 15 person for the arraignment."

16 On August 5, 2025, the Court convened for the previously noticed status conference. (Doc.
 17 13). Counsel for the government, counsel for Defendant, and a Japanese linguist appeared;
 18 however, Defendant did not appear. Because Defendant failed to appear, the Court ordered
 19 Defendant's counsel to show cause in writing why sanctions should not be imposed for
 20 Defendant's failure to comply with a court order and appear for arraignment. *Id.*

21 Pending before the Court is the response by counsel for Defendant to the Court's show
 22 cause order. (Doc. 14).¹

23 **Discussion**

24 In his declaration and response to the Court's order to show cause, counsel for Defendant
 25 generally attests that, "due to administrative failures," the Court's July 9 order directing counsel
 26

27 ¹ Counsel for Defendant misfiled his show cause response in the since-terminated petty
 28 offense case (Case No. 5:25-po-00103-CDB) on August 7, 2025. The undersigned's courtroom
 deputy re-filed the same document in this action on August 11, 2025. (Doc. 14).

1 and Defendant to appear in-person for anticipated arraignment on superseding information “was
2 overlooked in Counsel’s office.” (Doc. 14 at 2). While counsel acknowledges receiving the
3 CM/ECF notice of the July 9 order directing in-person appearance, he attests to not reading the
4 order due to his erroneous assumption that the order did not require further action, and also,
5 because he had other administrative duties to attend to and lacked sufficient administrative support.
6 *Id.* at 3. Counsel for Defendant also attests that the order “remained unreviewed” partly because
7 his support staff did not conduct a complete audit of the emails. *Id.* Counsel for Defendant attests
8 to having taken remedial actions within his office, including by setting a weekly task “to review
9 PACER for any updates where the emailed notifications may have been overlooked.” *Id.* at 4.

10 The Court finds that counsel for Defendant has failed to reasonably justify his failure to
11 either arrange for Defendant’s in-person appearance at the duly noticed August 5 hearing or to
12 timely seek to continue the hearing in light of Defendant’s reported unavailability.

13 While counsel for Defendant appears to indicate his staff may be partly responsible for his
14 failure to abide by the July 9 order and for Defendant’s failure to appear, Rule 5.3 of the California
15 Rules of Professional Conduct provides “[w]ith respect to a nonlawyer employed or retained by or
16 associated with a lawyer,” “a lawyer having direct supervisory authority over the nonlawyer,
17 whether or not an employee of the same law firm, shall make reasonable efforts to ensure that the
18 person’s conduct is compatible with the professional obligations of the lawyer” and “shall be
19 responsible for conduct of such a person[.]” Cal. Rules Prof. Conduct 5.3(b) & (c). As such, under
20 the circumstances, staff negligence or carelessness does not excuse counsel for Defendant’s failure
21 to abide by the July 9 order and for Defendant’s failure to appear. *See* Cal. Rules Prof. Conduct
22 5.3(c) (“[A] lawyer shall be responsible for the conduct [of his nonlawyer employee] ... if: (1) the
23 lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the
24 conduct involved[.]”).

25 Counsel for Defendant’s other explanations for failing and neglecting to read and abide by
26 the Court’s July 9 order are unconvincing. A party’s unjustified failure to timely notify the staff
27 court interpreters of a cancelled or rescheduled hearing may result in sanctions, including an order
28 to pay the cost of interpreter services. *See* Local Rule 403. Here, counsel for Defendant’s failure

1 to either arrange for Defendant's in-person appearance at the duly noticed August 5 hearing or to
2 timely seek to continue the hearing in light of Defendant's reported unavailability resulted in the
3 Court's incurrence of a \$350.00 fee for a Japanese linguist who did, in fact, appear for the
4 scheduled arraignment. Accordingly, the Court will direct counsel for Defendant to remit \$350.00
5 to the Clerk of the Court. *See* Local Rule 403.

6 **Conclusion and Order**

7 For the foregoing reasons, it is HEREBY ORDERED that counsel for Defendant, John
8 David Underwood, shall pay the Clerk of the Court \$350.00 within ten (10) days of entry of this
9 order, with the sum to be paid personally, and not to be transmitted to his client by way of a
10 charge of attorney's fees and/or costs.

11 And it is FURTHER ORDERED that counsel for Defendant shall file in this action a
12 notice of payment within three (3) days following tender to the Clerk of the Court of \$350.00.

13 Failure to timely comply with this order may result in the imposition of sanctions.

14 IT IS SO ORDERED.

15 Dated: **August 11, 2025**

16 
UNITED STATES MAGISTRATE JUDGE